

AMENDED IN SENATE AUGUST 12, 1998

AMENDED IN SENATE JULY 7, 1998

AMENDED IN SENATE JUNE 22, 1998

AMENDED IN ASSEMBLY MARCH 23, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2023**

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**Introduced by Assembly Member Gallegos  
(Principal coauthor: Assembly Member Margett)  
(Coauthor: Assembly Member Washington)**

February 18, 1998

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An act to amend Section 831.8 of, and to add and repeal Section 831.9 of, the Government Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 2023, as amended, Gallegos. Flood control and water conservation: liability.

Existing law provides that, except as specified, neither an irrigation district nor an employee thereof nor the state nor a state employee is liable for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

This bill would provide that, until January 1, 2002, neither a public agency that operates flood control and water conservation activities, as specified, nor its employees shall be

liable for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds under prescribed conditions.

This bill would also require, until January 1, 2002, the Los Angeles County Department of Public Works to maintain a record of all known or reported injuries incurred by the public in these channels or recharge spreading grounds during specified times and a record of all claims, paid and not paid, arising from those incidents, that were filed against the county. It would also require, until January 1, 2002, copies of these records to be filed annually with the Judicial Council, as specified, and would require the Judicial Council to submit a report to the Legislature on or before January 31, 2001.

Because this bill would create additional duties for local officials, it would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 831.8 of the Government Code  
2 is amended to read:

1 831.8. (a) Subject to subdivisions (d) and (e), neither  
2 a public entity nor a public employee is liable under this  
3 chapter for an injury caused by the condition of a  
4 reservoir if at the time of the injury the person injured  
5 was using the property for any purpose other than that for  
6 which the public entity intended or permitted the  
7 property to be used.

8 (b) Subject to subdivisions (d) and (e), neither an  
9 irrigation district nor an employee thereof nor the state  
10 nor a state employee is liable under this chapter for an  
11 injury caused by the condition of canals, conduits or  
12 drains used for the distribution of water if at the time of  
13 the injury the person injured was using the property for  
14 any purpose other than that for which the district or state  
15 intended it to be used.

16 (c) Subject to subdivisions (d) and (e), neither a  
17 public agency operating flood control and water  
18 conservation facilities nor its employees are liable under  
19 this chapter for an injury caused by the condition or use  
20 of unlined flood control channels or adjacent  
21 groundwater recharge spreading grounds if, at the time  
22 of the injury, the person injured was using the property  
23 for any purpose other than that for which the public  
24 entity intended it to be used, and, if all of the following  
25 conditions are met:

26 (1) The public agency operates and maintains dams,  
27 pipes, channels, and appurtenant facilities to provide  
28 flood control protection and water conservation for a  
29 county whose population exceeds nine million residents.

30 (2) The public agency operates facilities to recharge a  
31 groundwater basin system which is the primary water  
32 supply for more than one million residents.

33 (3) The groundwater supply is dependent on  
34 imported water recharge which must be conducted in  
35 accordance with court-imposed basin management  
36 restrictions.

37 (4) The basin recharge activities allow the  
38 conservation and storage of both local and imported  
39 water supplies when these waters are available.

1 (5) The public agency posts conspicuous signs warning  
2 of any increase in water flow levels of an unlined flood  
3 control channel.

4 (d) Nothing in this section exonerates a public entity  
5 or a public employee from liability for injury proximately  
6 caused by a dangerous condition of property if all of the  
7 following occur:

8 (1) The injured person was not guilty of a criminal  
9 offense under Article 1 (commencing with Section 552)  
10 of Chapter 12 of Title 13 of Part 1 of the Penal Code in  
11 entering on or using the property.

12 (2) The condition created a substantial and  
13 unreasonable risk of death or serious bodily harm when  
14 such property or adjacent property was used with due  
15 care in a manner in which it was reasonably foreseeable  
16 that it would be used.

17 (3) The dangerous character of the condition was not  
18 reasonably apparent to, and would not have been  
19 anticipated by, a mature, reasonable person using the  
20 property with due care.

21 (4) The public entity or the public employee had  
22 actual knowledge of the condition and knew or should  
23 have known of its dangerous character a sufficient time  
24 prior to the injury to have taken measures to protect  
25 against the condition.

26 (e) Nothing in this section exonerates a public entity  
27 or a public employee from liability for injury proximately  
28 caused by a dangerous condition of property if all of the  
29 following occur:

30 (1) The person injured was less than 12 years of age.

31 (2) The dangerous condition created a substantial and  
32 unreasonable risk of death or serious bodily harm to  
33 children under 12 years of age using the property or  
34 adjacent property with due care in a manner in which it  
35 was reasonably foreseeable that it would be used.

36 (3) The person injured, because of his or her  
37 immaturity, did not discover the condition or did not  
38 appreciate its dangerous character.

39 (4) The public entity or the public employee had  
40 actual knowledge of the condition and knew or should

1 have known of its dangerous character a sufficient time  
2 prior to the injury to have taken measures to protect  
3 against the condition.

4 (f) Subdivision (c) shall become inoperative on and  
5 after January 1, 2002.

6 SEC. 2. Section 831.9 is added to the Government  
7 Code, to read:

8 831.9. (a) The County of Los Angeles Department of  
9 Public Works shall maintain a record of all known or  
10 reported injuries incurred by the public in the unlined  
11 flood control channels or adjacent groundwater recharge  
12 spreading grounds during the activities of groundwater  
13 recharge. The County of Los Angeles Department of  
14 Public Works shall also maintain a record of all claims,  
15 paid and not paid, including any civil actions or  
16 proceedings and their results, arising from those  
17 incidents, that were filed against the county. Beginning  
18 in 2000, copies of these records shall be filed annually, no  
19 later than January 1 of each year, with the Judicial  
20 Council, which shall then submit a report to the  
21 Legislature on or before January 31, 2001, on the  
22 incidences of injuries incurred, claims asserted, and the  
23 results of any civil action or proceeding filed, by persons  
24 injured at these facilities.

25 (b) This section shall remain in effect only until  
26 January 1, 2002, and as of that date is repealed, unless a  
27 later enacted statute, that is enacted before January 1,  
28 2002, deletes or extends that date.

29 ~~SEC. 3. Notwithstanding Section 17610 of the~~  
30 ~~Government Code, if the Commission on State Mandates~~  
31 ~~determines that this act contains costs mandated by the~~  
32 ~~state, reimbursement to local agencies and school~~  
33 ~~districts for those costs shall be made pursuant to Part 7~~  
34 ~~(commencing with Section 17500) of Division 4 of Title~~  
35 ~~2 of the Government Code. If the statewide cost of the~~  
36 ~~claim for reimbursement does not exceed one million~~  
37 ~~dollars (\$1,000,000), reimbursement shall be made from~~  
38 ~~the State Mandates Claims Fund.~~

39 ~~Notwithstanding Section 17580 of the Government~~  
40 ~~Code, unless otherwise specified, the provisions of this act~~

1 ~~shall become operative on the same date that the act~~  
2 ~~takes effect pursuant to the California Constitution.~~

3 *SEC. 3. No reimbursement is required by this act*  
4 *pursuant to Section 6 of Article XIII B of the California*  
5 *Constitution because the only costs that may be incurred*  
6 *by a local agency or school district are the result of a*  
7 *program for which legislative authority was requested by*  
8 *that local agency or school district, within the meaning of*  
9 *Section 17556 of the Government Code and Section 6 of*  
10 *Article XIII B of the California Constitution.*

11 *Notwithstanding Section 17580 of the Government*  
12 *Code, unless otherwise specified, the provisions of this act*  
13 *shall become operative on the same date that the act*  
14 *takes effect pursuant to the California Constitution.*

